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15 **UNITED STATES DISTRICT COURT**
16 **NORTHERN DISTRICT OF CALIFORNIA**
17 **SAN FRANCISCO DIVISION**

18 JORGE SALHUANA, Individually and On
19 Behalf of All Others Similarly Situated,

20 Plaintiff,

21 v.

22 DIAMOND FOODS, INC., MICHAEL J.
23 MENDES, and STEVEN M. NEIL,

24 Defendants.

25 Case No. CV 11-05386 WHA

26 **NOTICE OF MOTION AND
27 MOTION OF THE OKLAHOMA
LAW ENFORCEMENT
RETIREMENT SYSTEM TO
CONSOLIDATE RELATED
ACTIONS, FOR APPOINTMENT AS
LEAD PLAINTIFF AND FOR
APPROVAL OF ITS SELECTION
OF LEAD COUNSEL;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT
THEREOF**

28 Date: February 23, 2012

Time: 2:00 p.m.

Dept.: Courtroom 8, 19th Floor

Judge: Honorable William H. Alsup

Date Action Filed: November 7, 2011

29 RICHARD MITCHEM, Individually and
30 On Behalf of All Others Similarly Situated,

31 Plaintiff,

32 v.

33 DIAMOND FOODS, INC., MICHAEL J.
34 MENDES, and STEVEN M. NEIL,

35 Defendants.

36 Case No. CV 11-05399 WHA

1 STEWART WOODWARD, Individually
2 and On Behalf of All Others Similarly
3 Situated,

4 Plaintiff,

5 v.

6 DIAMOND FOODS, INC., MICHAEL J.
7 MENDES, and STEVEN M. NEIL,

8 Defendants.

Case No. CV 11-05409 WHA

9 GARY RALL and MARION RALL, On
10 Behalf of Themselves and All Others
11 Similarly Situated,

12 Plaintiffs,

13 v.

14 DIAMOND FOODS, INC., MICHAEL J.
15 MENDES, and STEVEN M. NEIL,

16 Defendants.

Case No. CV 11-05457 WHA

17 GARY SIMON, Individually and on
18 Behalf of All Others Similarly Situated,

19 Plaintiff,

20 v.

21 DIAMOND FOODS, INC., MICHAEL J.
22 MENDES, and STEVEN M. NEIL,

23 Defendants.

Case No. CV 11-05479 WHA

24 HENRY J. MACFARLAND, Individually
25 and On Behalf of All Others Similarly
26 Situated,

27 Plaintiff,

28 v.

DIAMOND FOODS, INC., MICHAEL J.
MENDES, and STEVEN M. NEIL,

Defendants.

Case No. CV 11-05615 WHA

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NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that, on February 23, 2012, at 2:00 p.m., or as soon thereafter as this matter may be heard, in the courtroom of the Honorable William H. Alsup, located in Courtroom 8 on the 19th Floor of the United States District Court for the Northern District of California, 450 Golden Gate Avenue, San Francisco, California, 94102, the Oklahoma Law Enforcement Retirement System (“OLERS”) shall move the Court pursuant to Section 21D(a)(3)(B) of the Private Securities Litigation Reform Act of 1995 (“PSLRA”), 15 U.S.C. § 78u-4, *et seq.*, for an Order:

- (a) consolidating the above-captioned actions;
- (b) appointing OLERS as lead plaintiff for a class of investors who purchased securities of Diamond Foods, Inc. (“Diamond” or the “Company”); and
- (c) approving Berman DeValerio as lead counsel for the proposed class.

This motion is made on the grounds that the above-captioned federal securities law actions brought in this Court against Diamond allege similar legal claims based on the same or similar factual allegations, including alleged violations of federal securities laws, and should therefore be consolidated. Moreover, OLERS timely filed this motion and is the most adequate lead plaintiff. OLERS believe that it has the most substantial financial interest in the relief sought by the class, and it meets the requirements of Rule 23 of the Federal Rules of Civil Procedure (“Rule 23”) because its claims are typical of the claims of the proposed class and it will fairly and adequately represent the interests of the proposed class. Further, OLERS has selected and retained Berman DeValerio, a law firm with substantial experience in prosecuting securities fraud class actions, to serve as lead counsel for the proposed class.

OLERS bases this motion on this notice of motion and memorandum of law, the Declaration of Daniel E. Barenbaum in support thereof (“Barenbaum Declaration” or “Barenbaum Decl.”), the pleadings and other files herein, and such other written or oral argument as may be presented to the Court.

STATEMENT OF ISSUES

1. Whether the Court should consolidate the six pending federal securities actions against defendants, which involve common questions of law and fact.
2. Whether the Court should appoint OLERS as lead plaintiff under the PSLRA.
3. Whether the Court should approve OLERS' selection of Berman DeValerio as lead counsel for the proposed class.

SUMMARY OF ARGUMENT

OLERS seeks an order consolidating the above-captioned complaints brought under federal securities laws against defendants; appointing OLERS as lead plaintiff; and approving its selection of counsel as lead counsel for the proposed class.

The Court should consolidate the related cases because they present common questions of law and fact and because consolidation will promote judicial efficiency and will conserve the resources of the Court and the parties. Fed. R. Civ. P. 42(a); *Investors Research Co. v. U.S. Dist. Ct.*, 877 F.2d 777, 777 (9th Cir. 1989).

The Court should appoint OLERS as lead plaintiff because it has complied with the procedural requirements of the PSLRA and because it has the largest financial interest in the litigation. 15 U.S.C. 78u-4(a)(3); *In re Cavanaugh*, 306 F.3d 726, 729 (9th Cir. 2002). Moreover, OLERS claims are typical of the claims of the proposed class and OLERS will fairly and adequately represent the interests of the proposed class. *Armstrong v. Davis*, 275 F.3d 849, 868 (9th Cir. 2001); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998). Moreover, the PSLRA demonstrates a preference for institutional investors to act as lead plaintiff, and OLERS is an institutional investor. *Mohanty v. Bigband Networks, Inc.*, No. C 07-5101 SBA, 2008 U.S. Dist. LEXIS 32764, at *17 (N.D. Cal. Feb. 13, 2008).

The Court should approve OLERS' selection of counsel because its selected counsel, Berman DeValerio, will provide high-quality legal representation and will vigorously prosecute the claims of the proposed class. 15 U.S.C. 78u-4(a)(3); *In re Cavanaugh*, 306 F.3d at 734.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

On November 7, 2011, Jorge Salhuana (“Salhuana”) filed a class action complaint in this Court on behalf of all persons who purchased securities of Diamond during the period between April 5, 2011 and November 1, 2011, inclusive (the “Class”), alleging violations of federal securities laws. The *Salhuana* complaint named the Company, Michael J. Mendes and Steven M. Neil as defendants (collectively, “Defendants”). Since then, five additional plaintiffs have filed complaints in this Court asserting largely identical claims as Salhuana and alleging Class periods beginning as early as December 9, 2010 and ending as late as November 4, 2011.

All six complaints allege that, throughout the Class period, Defendants violated federal securities laws by issuing false and misleading statements that artificially inflated Diamond's stock price. All plaintiffs claim these statements violated Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. §§ 78j(b) and 78t(a), and Rule 10b-5, promulgated thereunder, 17 C.F.R. § 240.10b-5, by the Securities Exchange Commission ("SEC").

In line with the timeframe mandated by the PSLRA, 15 U.S.C. § 78u-4(a)(3)(A)(i), OLERS now moves for consolidation; for appointment as lead plaintiff; and for appointment of its selected counsel, Berman DeValerio, as lead counsel.

II. STATEMENT OF FACTS

Diamond is a Delaware corporation headquartered in San Francisco, California. It specializes in processing, marketing and distributing various packaged and branded snack foods, principally nuts. Diamond built its business by acquiring and energizing branded snacks such as Kettle Brand® Chips, Emerald® nuts, Pop Secret® popcorn, and Diamond of California® snack and culinary nuts. Diamond's stock trades on the NASDAQ Global Select Market under the ticker symbol "DMND," and it did so throughout the Class period.

As alleged in the complaints, Defendants issued false and misleading statements during the Class period about Diamond's financial health that artificially inflated the price of the Company's stock. Specifically, the complaints allege that Defendants made false and

1 misleading statements about Diamond's accounting for certain crop payments to walnut
 2 growers. By improperly accounting for those crop payments, Defendants are alleged to have
 3 manipulated the recording of expenses between fiscal years to misrepresent the Company's
 4 actual 2011 cost of goods and to artificially inflate its profitability and earnings per share. It is
 5 alleged that this was done under the shadow of Diamond's planned December 2011 acquisition
 6 of the Pringles® snack brand from the Procter & Gamble Company. Diamond stock would
 7 have provided consideration for the acquisition.

8 On November 1, 2011, the Company announced that its Audit Committee would
 9 investigate these accounting practices and also that the planned Pringles® acquisition was being
 10 delayed. On November 2nd, Diamond's share price fell 17.6%, to close at \$52.79. Further
 11 revelations about Diamond's accounting practices precipitated additional substantial stock price
 12 declines. By the time the *Salhuana* complaint was filed on November 7th, Diamond's stock
 13 price closed at \$39.09, having dropped 39% from November 1st.

14 Since November 7th, Diamond's sheen has been further tarnished. A member of the
 15 Company's Audit Committee recused himself from the investigation after its announcement due
 16 to a conflict of interest. Tragically, he committed suicide on November 17th, a fact about which
 17 the market did not learn and Diamond did not acknowledge until November 23rd.¹ Further
 18 revelations emerged in the press that certain walnut growers had received payments from
 19 Diamond in September 2011, despite the fact they had no plans to sell their crop to Diamond in
 20 2011. On December 15, 2011, the SEC announced that it had begun an investigation into
 21 Diamond's accounting for its payments to walnut growers.

22 During the Class period, OLERS purchased 7,200 shares of Diamond common stock,
 23 including net purchases of 4,500 shares.² *See* Barenbaum Decl. Ex. 2. OLERS expended a net

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¹ OLERS is not stating at this time that the suicide is related to this action; however it is relevant
 25 to this narrative because the market reacted to the eventual disclosure.

26

² A copy of the Plaintiff's Certification of Class Action Complaint, executed by OLERS, is
 27 attached as Exhibit 1 to the Barenbaum Declaration. This Certification sets forth the
 28 transactions of OLERS in Diamond securities during the Class period. In addition, a chart
 reflecting the calculations of OLERS' financial losses from its trading in Diamond securities is
 attached as Exhibit 2 to the Barenbaum Declaration.

1 amount of \$342,216 during the Class period, and it suffered a loss of approximately \$157,320,
 2 based on both first-in/first-out (“FIFO”) as well as last-in/first-out (“LIFO”) loss calculation
 3 analyses. *Id.*

4 **III. ARGUMENT**

5 **A. The Related Actions Should Be Consolidated**

6 On December 21, 2011, the Court ordered the six pending securities cases related. *See*
 7 Related Case Order, *Salhuana v. Diamond Foods, Inc.*, No. C 11-05386 WHA (Dec. 21, 2011),
 8 ECF No. 16. On January 3, 2012, the Court issued an Order to Show Cause Why Cases Should
 9 Not Be Consolidated. *See* ECF No. 18. The Court ordered any objections to consolidation
 10 submitted by January 9, 2012. *Id.*

11 OLERS does not object; it agrees that the Court should consolidate the six related cases.
 12 Federal Rule of Civil Procedure 42(a) (“Rule 42”) grants broad discretion to consolidate cases
 13 that involve common questions of law or fact. Fed. R. Civ. P. 42(a); *see also Investors*
 14 *Research Co.*, 877 F.2d at 777. “[C]lass action shareholder suits are ideally suited to
 15 consolidation because their unification expedites proceedings, reduces duplication, and
 16 minimizes the expenditure of time and money by all concerned. Consolidation facilitates
 17 discovery, conserves judicial resources and reduces the confusion and delay that result from
 18 prosecuting related class actions separately.” *Mohanty*, 2008 U.S. Dist. LEXIS 32764, at *9-10
 19 (internal citation omitted).

20 OLERS submits that it would be appropriate for the Court to consolidate the following
 21 actions, now pending in this district and as contemplated by the Court’s January 3rd Order to
 22 Show Cause:

Name & Case Number	File Date
<i>Salhuana v. Diamond Foods, Inc.</i> , No. CV 11-05386-WHA	November 7, 2011
<i>Mitchem v. Diamond Foods, Inc.</i> , No. CV 11-05399-WHA	November 7, 2011
<i>Woodward v. Diamond Foods, Inc.</i> , No. CV 11-05409-WHA	November 8, 2011
<i>Rall v. Diamond Foods, Inc.</i> , No. CV 11-05457-WHA	November 9, 2011

Name & Case Number	File Date
<i>Simon v. Diamond Foods, Inc.</i> , No. CV 11-05479-WHA	November 10, 2011
<i>MacFarland v. Diamond Foods, Inc.</i> , No. CV 11-05615-WHA	November 21, 2011

4 All of these actions share common questions of law and fact—namely, whether Defendants
 5 violated federal securities laws by overstating Diamond’s financial results through improper
 6 accounting.

7 For these reasons, and as the Court has acknowledged, consolidation of these actions and
 8 future related actions is proper under Rule 42(a).

9 **B. OLERS Should Be Appointed Lead Plaintiff**

10 **1. The PSLRA’s Lead Plaintiff Provisions**

11 The PSLRA sets forth a three-step procedure for the appointment of a lead plaintiff in
 12 class actions brought under the Exchange Act. 15 U.S.C. § 78u-4(a)(3)(B); *In re Cavanaugh*,
 13 306 F.3d at 729. First, within twenty days of filing a class action, the first-filing plaintiff must
 14 publish a notice advising members of the purported class of the pendency of the action, the
 15 claims asserted, the purported class period and their right to move the court for appointment as
 16 lead plaintiff of the purported class. 15 U.S.C. § 78u-4(a)(3)(A)(i); *Krieger v. Atheros*
 17 *Comm’ns, Inc.*, No. 11-CV-00640-LHK, 2011 U.S. Dist. LEXIS 147521, at *3 (N.D. Cal. Dec.
 18 12, 2011).

19 Second, upon considering all motions for appointment as lead plaintiff filed in response
 20 to the notice, the court must identify the presumptively “most adequate [lead] plaintiff.”
 21 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I); *Cavanaugh*, 306 F.3d at 729; *see also Krieger*, 2011 U.S.
 22 Dist. LEXIS 147521, at *4. That plaintiff is the entity that (1) filed the complaint or made a
 23 motion to serve as lead plaintiff within sixty days after publication of the required notice;
 24 (2) has the largest financial interest in the relief sought by the class; and (3) otherwise satisfies
 25 the requirements of Rule 23. 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I); *Cavanaugh*, 306 F.3d at 729;
 26 *see also Krieger*, 2011 U.S. Dist. LEXIS 147521, at *4.

27 Third, the court must then “give other plaintiffs an opportunity to rebut the presumptive
 28 lead plaintiff’s showing that it satisfies Rule 23’s typicality and adequacy requirements.”

1 *Cavanaugh*, 306 F.3d at 730. Only proof that the presumptively most adequate plaintiff “will
 2 not fairly and adequately protect the interests of the class” or “is subject to unique defenses that
 3 render such plaintiff incapable of adequately representing the class” can rebut the presumption
 4 of appointing the presumptively most adequate plaintiff as lead plaintiff. 15 U.S.C. § 78u-
 5 4(a)(3)(B)(iii)(II)(aa)-(bb); *Krieger*, 2011 U.S. Dist. LEXIS 147521, at *5.

6 As set forth below, OLERS satisfies all three of these criteria and is entitled to the
 7 presumption that it is the most adequate plaintiff.

8 **2. OLERS Has Complied with the Procedural Requirements of the
 9 PSLRA**

10 OLERS filed this Motion to serve as lead plaintiff in a timely manner. Pursuant to
 11 15 U.S.C. § 78u-4(a)(3)(A)(i), counsel in the *Salhuana* action, the first-filed action of the related
 12 cases, published notice of the pendency of this action on November 7, 2011, through *Business*
 13 *Wire*, a national, business-oriented news service. *See* Barenbaum Decl. Ex. 3. The notice
 14 advised Diamond investors that motions for appointment as lead plaintiff must be submitted no
 15 later than sixty days from the date of publication, *i.e.*, on or before January 6, 2012. 15 U.S.C.
 16 § 78u-4(a)(3)(A)(i). OLERS has filed its motion within the required time frame.

17 Moreover, pursuant to Section 21D(a)(2) of the Exchange Act and in accordance with
 18 applicable Local Rules, OLERS has signed and submitted a certification detailing its trading in
 19 Diamond securities and its suitability to serve as a class representative in this case. *See*
 20 Barenbaum Decl. Ex. 1.

21 **3. OLERS Is the Presumptive Lead Plaintiff Because It Has the Largest
 22 Financial Interest in the Relief Sought by the Proposed Class**

23 **a. OLERS Has the Largest Known Financial Loss**

24 The PSLRA establishes a rebuttable presumption that the lead plaintiff should be the
 25 movant with “the largest financial interest in the relief sought by the class” who also meets the
 26 requirements of Rule 23. *See* 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I)(bb); *see also* *Cavanaugh*,
 27 306 F.3d at 732. Courts calculate a movant’s financial interest “through accounting methods
 28 that are both rationally and consistently applied to establish which one has the most to gain from

1 the lawsuit.” *In re Vaxgen Sec. Litig.*, No. C 03-1129 JSW, 2004 U.S. Dist. LEXIS 29812, at *9
 2 (N.D. Cal. Apr. 14, 2004) (internal quotation marks omitted) (*quoting Cavanaugh*, 306 F.3d at
 3 730).

4 During the Class period, OLERS purchased 7,200 shares of Diamond common stock and
 5 lost \$157,320 under both the FIFO or LIFO methodologies.³ OLERS is unaware of any other
 6 investor who intends to file a motion for appointment as lead plaintiff in this action that has
 7 suffered larger losses than OLERS. Accordingly, OLERS believes that it has the largest
 8 financial interest in the relief sought by the proposed Class.

9 **b. As an Institutional Investor, OLERS Is the Preferred Type of
 10 Investor to Act as Lead Plaintiff Under the PSLRA**

11 In enacting the PSLRA, Congress expressed a clear preference for institutional investors,
 12 such as OLERS, to lead securities class actions. *See* H.R. Conference Report on the Securities
 13 Litigation Reform, S. Rep. No. 104-98, at 11 (1995), *reprinted in* 1995 U.S.C.C.A.N. 679, 690
 14 (“The Committee believes that increasing the role of institutional investors in class actions will
 15 ultimately benefit the class and assist the courts . . . [and] believes that an institutional investor
 16 acting as lead plaintiff can, consistent with its fiduciary obligations, balance the interests of the
 17 class with the long-term interests of the company and its public investors.”); *Mohanty*,
 18 2008 U.S. Dist. LEXIS 32764, at *17 (“It is true that Congress’s intent in enacting the PSLRA
 19 provisions governing the appointment of lead plaintiff was, in part, to increase the likelihood
 20 that institutional investors will serve as lead plaintiffs.”) (citation omitted).

21 As an institutional investor, OLERS fully understands its role as a fiduciary and
 22 possesses the financial sophistication, experience and resources to ensure that lead counsel will
 23 litigate in the best interests of the proposed Class. OLERS understands the complexities of
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 26 ³ In this case, the FIFO and LIFO approaches yield the same loss calculation for OLERS. *See*
 27 Barenbaum Decl. Ex. 2. The FIFO approach to loss calculation assumes that those stocks
 28 purchased first were sold first. *Perlmutter v. Intuitive Surgical, Inc.*, No. 10-CV-03451-LHK,
 2011 U.S. Dist. LEXIS 16813, at *32 (N.D. Cal. Feb. 15, 2011) (citation omitted). Under
 LIFO, the most recently acquired stocks are assumed to be sold first. *Id.*

1 securities litigation and class actions, and its strength and position as an institutional investor
 2 will help it command the best possible recovery.

3 **4. OLERS Satisfies the Requirements of Rule 23**

4 The PSLRA requires that the lead plaintiff satisfy the requirements of Rule 23.⁴
 5 15 U.S.C. § 78u-4(a)(3)(B). Courts applying the PSLRA focus principally on the *typicality*
 6 and *adequacy* elements of Rule 23 when appointing a lead plaintiff. *Rubke v. Capital Bancorp,*
 7 *Ltd.*, No C 05-4800 PJH, 2006 U.S. Dist. LEXIS 25170, at *8 (N.D. Cal. Mar. 31, 2006). A
 8 *prima facie* showing of *typicality* and *adequacy* is all that is required at the lead plaintiff
 9 appointment stage. *Schrivener v. Impac Mortg. Holdings, Inc.*, No. SACV 06-31-CJC (RNBx), *et*
 10 *seq.*, 2006 U.S. Dist. LEXIS 40607, at *16 (C.D. Cal. May 1, 2006).

11 **a. OLERS Claims Are Typical of the Claims of the Proposed**
 12 **Class**

13 The *typicality* requirement of Rule 23 is satisfied when the lead plaintiff's claims arise
 14 from the same event or course of conduct that gives rise to the claims of other class members
 15 and all claims are based on the same legal theory. *Armstrong*, 275 F.3d at 868 (“Typicality . . .
 16 is said to require that the claims of the class representatives be typical of those of the class, and
 17 to be satisfied when each class member’s claim arises from the same course of events, and each
 18 class member makes similar legal arguments to prove the defendant’s liability.”) (citation and
 19 internal quotation omitted); *see also Hanlon*, 150 F.3d at 1020 (“[C]laims are ‘typical’ if they
 20 are reasonably co-extensive with those of absent class members; they need not be substantially
 21 identical.”).

22 Here, OLERS, like other proposed Class members, seeks to hold Defendants liable for
 23 their violations of federal securities laws. Like other proposed Class members, OLERS
 24 acquired Diamond securities during the Class period at prices artificially inflated by the false
 25 statements and omissions of Defendants and suffered damages as a result. OLERS’ claims

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 27 ⁴ Rule 23 requires that (1) the class be so numerous that joinder of all members is impracticable;
 28 (2) questions of law common to the class exist; (3) such claims are typical of those of the class;
 and (4) the representatives will fairly and adequately protect the interests of the class. Fed. R.
 Civ. P. 23(a).

1 therefore arise from the same events and are based on the same legal theories as all proposed
2 Class members' claims. Indeed, OLERS' claims are identical to those of other proposed Class
3 members who invested in Diamond securities during the Class period and sustained losses when
4 the truth about Defendants' misrepresentations emerged. OLERS therefore fully satisfies the
5 typicality requirement of Rule 23.

b. OLERS Will Fairly and Adequately Represent the Interests of the Proposed Class

8 The *adequacy of representation* requirement of Rule 23 is satisfied where it is
9 established that a representative party “will fairly and adequately protect the interests of the
10 class.” Fed. R. Civ. P. 23(a)(4); *Rubke*, 2006 U.S. Dist. LEXIS 25170, at *8-9. Accordingly,
11 the Ninth Circuit has held that “[r]esolution of two questions determines legal adequacy: (1) do
12 the named plaintiffs and their counsel have any conflicts of interest with other class members
13 and (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of
14 the class.” *Hanlon*, 150 F.3d at 1020; *see also Perlmutter*, 2011 U.S. Dist. LEXIS 16813,
15 at *13. Further, the class representative must also have “sufficient interest in the outcome of the
16 case to ensure vigorous advocacy.” *Takeda v. Turbodyne Techs., Inc.*, 67 F. Supp. 2d 1129,
17 1137 (C.D. Cal. 1999).

18 OLERS fully satisfies the adequacy requirement. First, like all proposed Class
19 members, OLERS purchased Diamond securities during the Class period and suffered losses
20 when the truth about Defendants' misrepresentations emerged. The interests of OLERS and the
21 proposed Class are therefore closely aligned.

22 Second, as an experienced institutional investor, OLERS will effectively manage this
23 litigation and vigorously represent the interests of all proposed Class members. OLERS has
24 submitted the statutorily-required certification confirming it understands and is willing to
25 assume the responsibilities of a lead plaintiff. *See* Barenbaum Decl. Ex. 1. The significant
26 losses suffered by OLERS as a result of Defendants' misconduct will ensure vigorous advocacy.
27 *See id.*; *see also* Barenbaum Decl. Ex. 2. OLERS has also retained well-qualified and

1 experienced securities class action attorneys to represent the proposed Class. *See* Barenbaum
 2 Decl. Ex. 4. OLERS therefore qualifies as an adequate class representative.

3 **5. OLERS' Selection of Counsel Should Be Approved**

4 The PSLRA vests authority in the lead plaintiff to select and retain lead counsel, subject
 5 to approval by the Court. *See* 15 U.S.C. § 78u-4(a)(3)(B)(v); *Cavanaugh*, 306 F.3d at 734
 6 (“While the appointment of counsel is made subject to the approval of the court, the [PSLRA]
 7 clearly leaves the choice of class counsel in the hands of the lead plaintiff.”). The Court should
 8 not interfere with lead plaintiff’s selection of counsel unless necessary to protect the interests of
 9 the proposed Class. *Id.*

10 OLERS has retained the law firm of Berman DeValerio to serve as lead counsel for the
 11 proposed Class. Berman DeValerio is highly experienced in the areas of securities litigation
 12 and class actions and has successfully prosecuted numerous securities fraud class actions,
 13 obtaining excellent recoveries on behalf of defrauded investors. Further, counsel has the skill
 14 and knowledge that will enable them to prosecute this action effectively and expeditiously. *See*
 15 Barenbaum Decl. Ex. 4. The Court may rest assured that, by approving OLERS’ selection of
 16 counsel, the proposed Class will receive the highest caliber of legal representation.

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CONCLUSION

OLERS respectfully requests that the Court consolidate the above-captioned, related actions; appoint OLERS as lead plaintiff for the proposed Class; approve Berman DeValerio as lead counsel for the proposed Class; and grant such other relief as the Court may deem to be just and proper.

Dated: January 6, 2012

BERMAN DEVALERIO

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